

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

LANCE GEORGE OWEN, Petitioner, vs. WARDEN REYES, ATTORNEY GENERAL FOR THE STATE OF SOUTH DAKOTA, Respondents.	4:24-CV-04042-CCT ORDER REQUIRING PETITIONER TO FILE A FINANCIAL AFFIDAVIT
--	--

Petitioner, Lance George Owen, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. Docket 1. Magistrate Judge Veronica L. Duffy issued a report and recommended that Owen’s petition be dismissed without prejudice for lack of subject matter jurisdiction. Docket 5 at 10–11. This court overruled Owen’s objections, adopted the report and recommendation in full, and entered judgment without prejudice in favor of respondents. Docket 15 at 7; Docket 16. Owen has filed a notice of appeal. Docket 17. He moves for leave to proceed in forma pauperis on appeal, but he has not included a fully completed financial affidavit. *See* Docket 18.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the Prison Litigation Reform Act do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001) (per curiam). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court

need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S.C. § 1915(a)(1), (3).

Owen's financial affidavit does not contain sufficient information for this court to evaluate his ability to pay the filing fee. *See* Docket 18. Owen must submit a completed Long Form Application to Proceed in District Court Without Prepaying Fees or Costs (Form AO 239) and indicate his monthly income, monthly expenses, and assets. Owen must either submit this form or pay the \$605 appellate filing fee by **January 31, 2025**.

Thus, it is ORDERED

1. That the Clerk of Court will send Owen a copy of Form AO 239.
2. That Owen must submit a completed Long Form Application to Proceed in District Court Without Prepaying Fees or Costs (Form AO 239) or pay the \$605 appellate filing fee by **January 31, 2025**.

Dated January 3, 2025.

BY THE COURT:

/s/ *Camela C. Theeler*

CAMELA C. THEELER

UNITED STATES DISTRICT JUDGE